STATE OF ARIZONA

Department of Insurance and Financial Institutions FILED September 23, 2021 by AS

STATE OF ARIZONA

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

3 In the Matter of the Loan Originator 4

No. 21A-029-FIN

ORDER

Activities of:

DEAN WILHELM

Loan Originator License No. 0930585

Respondent.

On September 14, 2021, the Office of Administrative Hearings, through Administrative Law Judge Tammy L. Eigenheer, issued an Administrative Law Judge Decision ("Recommended Decision"). The Director of the Arizona Department of Insurance and Financial Institutions ("Director") received the Recommended Decision on September 15, 2021, a copy of which is attached and incorporated by reference. The Director has reviewed the Recommended Decision and enters the following:

- 1. The Director ADOPTS the Recommended Findings of Fact.
- 2. The Director ADOPTS the Recommended Conclusions of Law.
- 3. The Director ADOPTS, in part, the Recommended Order and ORDERS the following:
 - a. Dean Wilhelm's Arizona Loan Originator License, Number 0930585, is revoked effective immediately.
 - b. Dean Wilhelm to pay to the Department a civil money penalty in the amount of ten thousand dollars (\$10,000.00).
- 4. The Director MODIFIES, in part, the Recommended Order and ORDERS the following:
 - c. Dean Wilhelm is prohibited from participation in any of the affairs of any financial institution or enterprise for a period of twenty (20) years.

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NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Respondent may request a rehearing or review with respect to this Order by filing a written motion with the Director within 30 days after the date of this Order, setting forth the basis for relief under Arizona Administrative Code R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to the Superior Court.

Respondent may appeal the final decision of the Director to the Superior Court of Maricopa County for judicial review, pursuant to A.R.S. § 6-139. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal, pursuant A.R.S. § 12-904(B).

DATED this 23rd day of September, 2021.

Evan G. Daniels, Director

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Arizona Department of Insurance and

Financial Institutions

1	COPY of the foregoing electronically transmitted this _29th day of September , 2021, to:
2	•
3	Tammy L. Eigenheer, Administrative Law Judge Office of Administrative Hearings
4	https://portal.azoah.com/submission
5	COPY of the foregoing mailed by U.S. Certified Mail, Electronic Receipt Requested, same date to:
6	
7	Dean Wilhelm 12 Bar Heart Dr. 9489 0090 0027 6266 7864 25
8	Prescott, AZ 86301 Respondent
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10	COPY of the foregoing electronically delivered same date to:
11	Deian Ousounov, Regulatory Legal Affairs Officer Ana Starcevic, Paralegal Project Specialist
12	Gabriela Macias, Mortgage Lending Division Manager
13	Steven Fromholtz, Division Manager Linda Lutz, Legal Assistant
14	Arizona Department of Insurance and Financial Institutions
15	100 North 15th Avenue, Suite 261 Phoenix, Arizona 85007
16	COPY sent same date via electronic mail to:
17	Dean Wilhelm
18	Respondent Respondent
19	Eric Schwarz, Assistant Attorney General
20	Eric.Schwarz@azag.gov Attorney for the Arizona Department of Insurance and Financial Institutions
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22	Ana Starcevic
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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

Dean Wilhelm (LO-0930585) Respondent

HEARING: August 26, 2021

No. 21A-029-FIN

ADMINISTRATIVE LAW JUDGE DECISION

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<u>APPEARANCES</u>: The Arizona Department of Insurance and Financial Institutions was represented by Assistant Attorney General Eric Schwarz.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

FINDINGS OF FACT

- 1. The Arizona Department of Insurance and Financial Institutions (Department) has been authorized and entrusted by the Arizona legislature to regulate financial institutions and enterprises in the State of Arizona.
- 2. On or about July 20, 2015, Respondent Dean Wilhelm was issued a license as a loan originator in the State of Arizona, License No. LO-0930585. Pursuant to A.R.S. § 6-991.04, Respondent's loan originator license expired effective February 1, 2021, after he failed to renew his license by January 31, 2021.
- 3. At all times relevant to this matter, Respondent was performing loan originator activities in Arizona as an employee of V.I.P. Mortgage, Inc. (VIP Mortgage), an Arizona licensed mortgage banker, while Respondent held a valid Arizona loan originator license.
- 4. On or about April 23, 2020, VIP Mortgage hired Respondent as a "loan officer" performing loan originator duties for VIP Mortgage.
- 5. On or about November 20, 2020, VIP Mortgage reported to the Department that Respondent, while he was an employee of VIP Mortgage, was involved in illegal or improper business practices of altering and/or forging documents to allow mortgage loan applicants who had applied for residential mortgage loans with VIP Mortgage to qualify for those mortgages.

- 6. Due to this information, the Department began an investigation to determine whether Respondent had indeed been involved in illegal or improper business practices of altering and/or forging documents while employed as a loan originator with VIP Mortgage.
- 7. In cooperation with VIP Mortgage, the Department's investigation found that Respondent altered and/or forged financial documents that were included in five (5) different mortgage loan application files for the same two borrowers: Rene and Ed Cervantes. Those five files were:
 - a. Cervantes Loan #1, loan file number XXX099;
 - b. Cervantes Loan #2, loan file number XXX309;
 - c. Cervantes Loan #3, loan file number XXX873;
 - d. Cervantes Loan #4, loan file number XXX271; and
 - e. Cervantes Loan #5, Ioan file number XXX277;
- 8. Only Cervantes Loan #1 was ultimately closed and funded by VIP Mortgage. Cervantes Loan #1 was closed and funded on July 14, 2020.
- 9. In October 2020, VIP Mortgage's third-party auditor, QC Ally, conducted random post-closing audits of some of the VIP Mortgage loans that have been closed in the 3rd Quarter of 2020. One of the loans that QC Ally audited was Cervantes Loan #1.
 - a. As part of the audit, QC Ally sent copies of two Alaska Federal Credit Union (AFCU) account statements for an account owned by the Cervantes that were included in the VIP Mortgage loan file for Cervantes Loan #1 to AFCU and requested verification from AFCU that the information contained in the two statements matched AFCU's records. The two AFCU account statements were for the time periods of May 8, 2020, through June 7, 2020, and June 8, 2020, through July 7, 2020.
 - b. AFCU responded to QC Ally's verification request by informing QC Ally that the balances shown in the two AFCU account statements provided to them by QC Ally did not match AFCU's records of those balances.

- c. On or about October 29, 2020, VIP Mortgage received QC Ally's postclosing audit report on Cervantes Loan #1, which detailed QC Ally's finding of misrepresentation of the Cervantes' assets at AFCU.
- d. On or about November 16, 2020, VIP Mortgage Chief Compliance Officer (CCO) Tina Rose spoke with an AFCU representative about the two AFCU account statements in question and the post-closing audit's finding of misrepresentation of assets, and the AFCU representative confirmed to CCO Rose that the audit findings were accurate and that the account balances on the two statements in question did not match AFCU's records. The AFCU representative told CCO Rose that the two account statements in question appeared to have been "altered".
- 10. After confirming that two altered AFCU account statements had been used to secure Cervantes Loan #1, VIP Mortgage immediately halted all loans in process for the loan officer of record for Cervantes Loan #1, Rebekah Wilhelm, Respondent's wife and a VIP Mortgage employee. At that time, VIP Mortgage found that Ms. Wilhelm had four additional loans in process for the Cervantes Cervantes Loan #2; Cervantes Loan #3; Cervantes Loan #4; and Cervantes Loan #5.
- 11. VIP Mortgage then pulled and reviewed all emails between Respondent, Ms. Wilhelm, and the Cervantes, and found the following emails and attachments:
 - a. June 18, 2020: An email from Ms. Cervantes to Respondent including the message: "Alaska credit union statement." As an attachment to that email, Ms. Cervantes sent Respondent a "Statement of Account" from AFCU for the time period of May 8, 2020, through June 7, 2020. In the "Account Summary" section of that AFCU account statement, the "Previous Balance" was listed as \$2,632.05 and the "New Balance" was listed as \$3,314.98.
 - b. July 10, 2020 at 4:51 p.m.: An email from Respondent to Ms. Wilhelm including the message: "Here you go. Please look these over as they can help solve the solution". Respondent also sent two attachments with that email. The first attachment was an altered version of the

Cervantes AFCU account statement for the time period of May 8, 2020, through June 7, 2020, showing a falsified "Previous Balance" of \$52,632.02 and a falsified "New Balance" of \$53,314.98. The second attachment was an altered version of the Cervantes AFCU account statement for the time period of June 8, 2020, through July 7, 2020, showing a falsified "Previous Balance" of \$53,314.98 and a falsified "New Balance" of \$54,226.80.

- c. July 10, 2020 at 5:19 p.m.: An email from Ms. Wilhelm to VIP Mortgage loan processor Lindsey Cloud including the message: "Here are the other assets the borrower has. I believe between Alaska and BBVA we are good." Attached to that email, Ms. Wilhelm included the two altered Cervantes AFCU account statements that Respondent had sent to her be email 28 minutes earlier on June 10, 2020.
- 12. On or about November 17, 2020, CCO Rose spoke to Ms. Wilhelm on the telephone regarding the two altered Cervantes AFCU account statements found in the loan file for Cervantes Loan #1. Ms. Wilhelm denied any knowledge of the altered documents and told CCO Rose that she should speak to Respondent as he was "really the loan officer" on Cervantes Loan #1.
- 13. On or about November 17, 2020, CCO Rose spoke to Respondent on the telephone. At that time Respondent admitted to CCO Rose that he had altered the two Cervantes AFCU account statements in the loan file for Cervantes Loan #1. CCO Rose then asked Respondent if he had also altered any financial statements on the other four Cervantes loan files that were in process. Respondent admitted to CCO Rose that he had altered financial statements in the other four Cervantes loan files "in order to cover my tracks." Respondent apologized for what he had done, and CCO Rose told him that she would call him back later.
- 14. As VIP Mortgage examined the contents of the loan files for Cervantes Loan #2, Cervantes Loan #3, Cervantes Loan #4, and Cervantes Loan #5, and noted that each of the loan files included three account statements for a business account at BBVA bank, Account No. XXX830, in the name of Always Clear Pool Services LLC, a company owned

by the Cervantes. The three account statements for the BBVA account found in each of the loan files contained the following information:

- a. Account statement for the time period of June 1, 2020, through June 30, 2020: "Ending balance last statement" of \$12,248.95 and "Ending balance this statement" of \$63,083.44.
- b. Account statement for the time period of July 1, 2020, through July 31, 2020: "Ending balance last statement" of \$63,083.44 and "Ending balance this statement" of \$68,976.65.
- c. Account statement for the time period of August 1, 2020, through August 30, 2020: "Ending balance last statement" of \$68,976.65 and "Ending balance this statement" of \$69,238.98.
- 15. On or about November 17, 2020, Ms. Cervantes emailed a copy of the correct, unaltered account statement for BBVA Account No. XXX830 for the time period of August 1, 2020, through August 30, 2020, to VIP Mortgage. That correct, unaltered account statement showed that the actual "Ending balance last statement" was \$14,938.64, not \$68,976.65, and that the actual "Ending balance this statement" was \$15,238,98, not \$69,238.98.
- 16. VIP Mortgage's confirmation of the account statement for BBVA Account No. XXX830 for the time period of August 1, 2020, through August 30, 2020, included in the loan files for Cervantes Loans #2 through #5 also confirmed that the "Ending balance this statement" amount included in the account statement for BBVA Account No. XXX830 for the time period of July 1, 2020, through July 31, 2020, had also been altered.
- 17. On or about November 17, 2020, CCO Rose initiated a 4-way call between herself, Respondent, and two other VIP Mortgage employees, Tara Vaccaro and Joani Tadrick. Respondent again admitted that he had altered documents that were included in each of the five Cervantes loan files detailed previously. CCO Rose then told Respondent that both he and Ms. Wilhelm were terminated from VIP Mortgage for committing fraud.
- 18. VIP Mortgage notified the Department of Respondent's actions and provided all of the documents it had collected during the course of its investigation.

- 19. On or about July 9, 2021, the Department issued a Notice of Hearing that alleged violations of A.R.S. § 6-161(A)(1) and (6) and A.R.S. § 6-991.02(I) and (K).
- 20. The Notice of Hearing indicated the hearing would convene at 9:00 a.m. on August 26, 2021, and was sent to Respondent's email address of record and by certified mail to Respondent's address of record.
- 21. Respondent did not appear in person, telephonically, or by video conference at the duly noticed hearing and did not request that the hearing be continued prior to the hearing convening. Although the start of the hearing was delayed 15 minutes to allow Respondent an opportunity to appear, he did not appear, personally or through an attorney, and did not contact the OAH to request that the start of the hearing be further delayed prior to the hearing convening. Consequently, Respondent did not present any evidence to defend his loan originator license.

CONCLUSIONS OF LAW

- 1. The Notice of Hearing that the Department mailed to Respondent at his address and email address of record was reasonable and he is deemed to have received notice of the hearing.¹
- 2. The Department has the authority and duty to regulate all persons engaged in the loan originator business by applying the applicable statutes, rules, and regulations relating to loan originators.² This matter lies within the Department's jurisdiction.
- 3. The Department bears the burden of proof to establish Respondent's statutory violation by a preponderance of the evidence.³ "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."⁴
 - 4. A.R.S. § 6-161, provides, in pertinent part, as follows:
 - A. The superintendent, subject to the requirements of this article, may remove or suspend from office or prohibit from participating in any of the affairs of a financial institution or enterprise any director, officer, employee,

¹ A.R.S. §§ 41-1092.04; 41-1092.05(D).

² A.R.S. § 6-991 et seq.

³ A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; see also Vazanno v. Superior Court, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

agent or other person participating in the conduct of the affairs of the financial institution or enterprise if he finds that the director, officer, employee, agent or other person participating in the conduct of the affairs of the financial institution or enterprise has engaged in any of the following:

1. Any act, omission or practice in any business transaction which demonstrates personal dishonesty or unfitness to continue in office or participate in the conduct of the affairs of the financial institution or enterprise.

. . . .

- 6. Any violation of this title relative to the financial institution or enterprise.
- 5. A.R.S. § 6-991.02 details "Prohibited acts" to include, in pertinent part, the following:
 - I. A loan originator shall not make a false promise or misrepresentation or conceal an essential or material fact in the course of the mortgage broker or mortgage banker business.

. . . .

- K. A loan originator shall not engage in illegal or improper business practices.
- 6. The evidence established that Respondent willfully altered documents relating to the four Cervantes loans. Such conduct demonstrates Respondent's personal dishonesty, which constitutes a violation of A.R.S. § 6-161(A)(1).
- 7. The evidence established that Respondent made misrepresentations and concealed an essential or material fact by forging or altering documents submitted to VIP Mortgage in the course of the mortgage banker business. Respondent's actions constitute a violation of A.R.S. § 6-991.02(I), which also constitutes a violation of A.R.S. § 6-161(A)(6).
- 8. The evidence established that Respondent engaged in improper business practices by forging or altering documents submitted to VIP Mortgage. Respondent's actions constitute a violation of A.R.S. § 6-991.02(K), which also constitutes a violation of A.R.S. § 6-161(A)(6).

- 9. With respect to the penalty, Respondent's willful alteration of essential documents and his failure to appear at the duly noticed hearing, established that he cannot be regulated at this time.
 - 10. A.R.S. § 6-132 provides, in pertinent part, as follows:

The superintendent may assess a civil penalty in an amount of not more than five thousand dollars against a person, including any officer, director, employee, agent or other person who participates in the conduct of the affairs of the person, for any knowing violation of any provision of this title or of any rule or order adopted or issued pursuant to this title.

- 11. In the instant matter, Respondent violated two different statutes. Therefore, the Administrative Law Judge concludes the requested civil penalty of \$10,000.00 is appropriate in this matter.
- 12. Further, the Administrative Law Judge concludes that Respondent should be prohibited from participating in any of the affairs of a financial institution for a period of 20 years.

RECOMMENDED ORDER

Based on the foregoing,

IT IS ORDERED that on the effective date of the final order in this matter, Respondent Dean Wilhelm's Loan Originator License No. LO-0930585 shall be revoked.

IT IS FURTHER ORDERED that the Department prohibit Respondent Dean Wilhelm from participating in any of the affairs of a financial institution for a period of 20 years.

IT IS FURTHER ORDERED that the Department require Respondent Dean Wilhelm to pay the sum of \$10,000.00 as a civil penalty pursuant to A.R.S. § 6-132.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be five days from the date of that certification.

Done this day, September 14, 2021.

/s/ Tammy L. Eigenheer Administrative Law Judge

 Transmitted electronically to:

Evan G. Daniels, Department of Insurance and Financial Institutions - Financial